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 CRAIG YATES, an individual

7 UNITED STATES DISTRICT COURT  
 8 NORTHERN DISTRICT OF CALIFORNIA

E-filing

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 NORTHERN DISTRICT OF CALIFORNIA  
 EMC

9  
 10 CRAIG YATES, an individual,

11 Plaintiff,

12 v.

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 14  
 15 TOASTIES, HON WING FUNG and PIK  
 WAH LEE FUNG, as Trustees of THE  
 16 FUNG FAMILY TRUST, U.D.T. ("Under  
 Declaration of Trust"), Dated August 24,  
 17 1994; and CHARLIE TRUONG, an  
 18 individual, dba TOASTIES,

19 Defendants.

C V 10 1485  
 CASE NO.  
Civil Rights

COMPLAINT FOR INJUNCTIVE RELIEF  
 AND DAMAGES:

1st CAUSE OF ACTION: For Denial of Access  
 by a Public Accommodation in Violation of the  
 Americans with Disabilities Act of 1990 (42  
 U.S.C. §12101, *et seq.*)

2nd CAUSE OF ACTION: For Denial of Full  
 and Equal Access in Violation of California  
 Civil Code §§54, 54.1 and 54.3

3rd CAUSE OF ACTION: For Denial of  
 Accessible Sanitary Facilities in Violation of  
 California Health & Safety Code §19955, *et seq.*

4th CAUSE OF ACTION: For Denial of  
 Access to Full and Equal Accommodations,  
 Advantages, Facilities, Privileges and/or  
 Services in Violation of California Civil Code  
 §51, *et seq.* (The Unruh Civil Rights Act)

DEMAND FOR JURY

1 Plaintiff CRAIG YATES, an individual, complains of defendants TOASTIES, HON  
2 WING FUNG and PIK WAH LEE FUNG, as Trustees of THE FUNG FAMILY TRUST, U.D.T.  
3 (“Under Declaration of Trust”), Dated August 24, 1994; and CHARLIE TRUONG, an  
4 individual, dba TOASTIES and alleges as follows:

5 **INTRODUCTION:**

6 1. This is a civil rights action for discrimination against persons with physical  
7 disabilities, of which class plaintiff CRAIG YATES and the disability community are members,  
8 for failure to remove architectural barriers structural in nature at defendants’ TOASTIES, a place  
9 of public accommodation, thereby discriminatorily denying plaintiff and the class of other  
10 similarly situated persons with physical disabilities access to, the full and equal enjoyment of,  
11 opportunity to participate in, and benefit from, the goods, facilities, services, and  
12 accommodations thereof. Plaintiff seeks injunctive relief and damages pursuant to the  
13 Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*; California Civil Code §§51,  
14 51.5 and 54, *et seq.*; and California Health & Safety Code §19955, *et seq.*

15 2. Plaintiff CRAIG YATES is a person with physical disabilities who, on or about  
16 February 9, 2009, March 7, 2009, March 9, 2009, April 10, 2009, January 26, 2010 and  
17 February 3, 2010, was an invitee, guest, patron, customer at defendants’ Café Gratitude and  
18 TOASTIES, in the City of San Francisco, California. At said times and place, defendants failed  
19 to provide proper legal access to the premises of then Café Gratitude and now TOASTIES, each  
20 which is a “public accommodation” and/or a “public facility” including, but not limited to the  
21 entrance and unisex restroom. The denial of access was in violation of both federal and  
22 California legal requirements, and plaintiff CRAIG YATES suffered violation of his civil rights  
23 to full and equal access, and was embarrassed and humiliated.

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1 **JURISDICTION AND VENUE:**

2 3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C.  
 3 §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*  
 4 Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same  
 5 nucleus of operative facts and arising out of the same transactions, are also brought under parallel  
 6 California law, whose goals are closely tied with the ADA, including but not limited to violations  
 7 of California Civil Code §51, *et seq.* and §54, *et seq.*, California Health & Safety Code §19955 *et*  
 8 *seq.*, including §19959; Title 24 California Building Standards Code.

9 4. **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is  
 10 founded on the facts that the real property which is the subject of this action is located at/near  
 11 1336 9<sup>th</sup> Avenue, in the City and County of San Francisco, State of California, and that plaintiff's  
 12 causes of action arose in this county.

13 **PARTIES:**

14 5. Plaintiff CRAIG YATES is a "physically handicapped person", a "physically  
 15 disabled person", and a "person with physical disabilities" (hereinafter the terms "physically  
 16 disabled", "physically handicapped" and "person with physical disabilities" are used  
 17 interchangeably, as these words have similar or identical common usage and legal meaning, but  
 18 the legislative scheme in Part 5.5 of the Health & Safety Code uses the term "physically  
 19 handicapped persons" and the Unruh Civil Rights Act, §§51, 51.5, 54 and 54.1, and other  
 20 statutory measures refer to protection of the rights of "physically disabled persons"). Plaintiff  
 21 CRAIG YATES is a "person with physical disabilities", as defined by all applicable California  
 22 and United States laws. Plaintiff is a triplegic. Plaintiff CRAIG YATES requires the use of a  
 23 wheelchair to travel about in public. Consequently, plaintiff CRAIG YATES is a member of that  
 24 portion of the public whose rights are protected by the provisions of Health & Safety Code  
 25 §19955, *et seq.* (entitled "Access to Public Accommodations by Physically Handicapped  
 26 Persons") and the protections of the Unruh Civil Rights Act, Civil Code §§51 and 51.5 the  
 27 Disabled Persons Act, Civil Code §54, and the Americans with Disabilities Act, 42 U.S.C.  
 28 §12101, *et seq.*

6. Defendants TOASTIES, HON WING FUNG and PIK WAH LEE FUNG, as Trustees of THE FUNG FAMILY TRUST, U.D.T. ("Under Declaration of Trust"), Dated August 24, 1994; and CHARLIE TRUONG, an individual, dba TOASTIES (hereinafter alternatively collectively referred to as "defendants") are the owners and operators, lessors and/or lessees, or agents of the owners, lessors and/or lessees, of the public accommodation formerly known as Café Gratitude and now as TOASTIES, located at/near 1336 9<sup>th</sup> Avenue, San Francisco, California, or of the building and/or buildings which constitute said public accommodation.

7. At all times relevant to this complaint, defendants HON WING FUNG and PIK WAH LEE FUNG, as Trustees of THE FUNG FAMILY TRUST, U.D.T. ("Under Declaration of Trust"), Dated August 24, 1994; and CHARLIE TRUONG, an individual, dba TOASTIES, own and operate in joint venture the either subject Café Gratitude or TOASTIES as a public accommodation. Each business was/is open to the general public and conducts business therein. The business is a "public accommodation" or "public facility" subject to the requirements of California Civil Code §§51, 51.5 and 54, *et seq.*, Health and Safety code §19955, *et seq.*, and the ADA, 42 U.S.C. §12101, *et seq.*

8. At all times relevant to this complaint, defendants HON WING FUNG and PIK WAH LEE FUNG, as Trustees of THE FUNG FAMILY TRUST, U.D.T. ("Under Declaration of Trust"), Dated August 24, 1994; and CHARLIE TRUONG, an individual, dba TOASTIES are jointly and severally responsible to identify and remove architectural barriers at the subject public accommodations for which each was responsible for pursuant to Code of Federal Regulations title 28, section 36.201(b), which states in pertinent part:

**§ 36.201 General**

(b) *Landlord and tenant responsibilities.* Both the landlord who owns the building that houses a place of public accommodation and the tenant who owns or operates the place of public accommodation are public accommodations subject to the requirements of this part. As between the parties, allocation of responsibility for complying with the obligations of this part may be determined by lease or other contract.

28 CFR §36.201(b)

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1 **PRELIMINARY FACTUAL ALLEGATIONS:**

2 9. The Café Gratitude and now TOASTIES, each was/is a restaurant, located at/near  
3 1336 9<sup>th</sup> Avenue San Francisco, California. The then Café Gratitude and now TOASTIES, their  
4 entrance and unisex restroom, and its other facilities are each a “place of public accommodation  
5 or facility” subject to the barrier removal requirements of the Americans with Disabilities Act.  
6 On information and belief, each such facility has, since July 1, 1970, undergone “alterations,  
7 structural repairs and additions,” each of which has subjected the then Café Gratitude and now  
8 TOASTIES and each of its facilities, their entrance and unisex restroom to disability access  
9 requirements per the Americans with Disabilities Act Accessibility Guidelines (ADAAG), and  
10 Title 24 of the California Code of regulations (Title 24).

11 10. On or about August of 1994, defendants’ and each of them purchased, transferred  
12 deeds and/or took possessory control of the premises now known as TOASTIES. At all times  
13 prior thereto, defendants’ and each of them were aware of their obligation prior to the close of  
14 escrow, or upon taking possessory interest that public accommodations had a duty to identify and  
15 remove architectural barriers and were aware that the then Café Gratitude and now TOASTIES  
16 was not accessible to the disabled. Nevertheless, defendants’ and each of them, operated each of  
17 said public accommodations as though it was accessible.

18 11. At all times stated herein, defendants’ and each of them with the knowledge that  
19 each of them had a continuing obligation to identify and remove architectural barriers where it  
20 was readily achievable to do so, failed to adopt a transition plan to provide better and/or  
21 compliant access to the subject accommodation.

22 12. At all times referred to herein and continuing to the present time, defendants, and  
23 each of them, advertised, publicized and held out the then Café Gratitude and now TOASTIES as  
24 being handicapped accessible and handicapped usable.

25 13. On or about February 9, 2009, March 7, 2009, March 9, 2009 and April 10, 2009,  
26 plaintiff CRAIG YATES was an invitee and guest at the subject Café Gratitude, for purposes of  
27 purchasing and consuming food and beverages.

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1           14.     On or about February 9, 2009, March 7, 2009, March 9, 2009 and April 10, 2009,  
2 plaintiff CRAIG YATES was unable to gain front entrance access to the Café Gratitude due to a  
3 six (6) inch high landing in front of the door at the subject café.

4           15.     On or about February 9, 2009, plaintiff CRAIG YATES could not access Café  
5 Gratitude. Plaintiff CRAIG YATES was compelled to phone his order in and conduct his  
6 business from the sidewalk. Plaintiff CRAIG YATES spoke with a person who acknowledged  
7 her name as "Empress." Plaintiff CRAIG YATES understood her to be the manager.

8           16.     At said time and place, plaintiff CRAIG YATES engaged Empress in a discussion  
9 relative to Café Gratitude about providing a portable ramp to provide access. Empress  
10 acknowledged that she would take the responsibility to convey plaintiff's request to those  
11 authorized to purchase a ramp. It was understood that a portable ramp would solve the access  
12 problem.

13           17.     On or about March 7, 2009, plaintiff CRAIG YATES returned to Café Gratitude.  
14 The day was cold and misty. Plaintiff CRAIG YATES could not enter the café. Plaintiff CRAIG  
15 YATES had to get the attention of staff to come out unto the sidewalk and take his order.  
16 Plaintiff CRAIG YATES inquired about the ramp. Plaintiff CRAIG YATES was told it had not  
17 arrived. Plaintiff CRAIG YATES secured his order and left.

18           18.     On or about March 9, 2009, plaintiff CRAIG YATES again patronized Café  
19 Gratitude. It was another cold and misty day. Plaintiff CRAIG YATES telephoned his order in.  
20 When plaintiff CRAIG YATES arrived, plaintiff CRAIG YATES could not get into the  
21 restaurant. Plaintiff CRAIG YATES asked the waiter about the ramp and the waiter had no  
22 knowledge about it.

23           19.     On or about but before April 10, 2009, plaintiff CRAIG YATES learned that the  
24 unisex restroom at the Café Gratitude was not accessible.

25           20.     On or about April 10, 2009, plaintiff CRAIG YATES once again patronized Café  
26 Gratitude. Again, plaintiff CRAIG YATES could not access the café. There was no ramp at said  
27 time.

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1           21. Plaintiff CRAIG YATES was informed that Café Gratitude would be closing and  
2 no longer doing business at the subject location.

3           22. At said time and place, plaintiff CRAIG YATES does not and will not seek  
4 damages from defendants HON WING FUNG and PIK WAH LEE FUNG, as Trustees of THE  
5 FUNG FAMILY TRUST, U.D.T. ("Under Declaration of Trust"), Dated August 24, 1994, for  
6 any violations stemming from the operation of Café Gratitude, for which the trust had no  
7 possessory control and/or otherwise.

8           23. On or about but before August 18, 2009, plaintiff CRAIG YATES was on 9<sup>th</sup>  
9 Avenue, San Francisco, California at the old location of Café Gratitude. It appeared to plaintiff  
10 CRAIG YATES that a new business was going in. A wooden ramp connected the sidewalk with  
11 the top of the landing.

12           24. On or about January 26, 2010, plaintiff CRAIG YATES patronized TOASTIES  
13 located at 1336 9<sup>th</sup> Avenue, San Francisco, California. Plaintiff CRAIG YATES got the attention  
14 of staff and inquired about the whereabouts of the ramp. Plaintiff CRAIG YATES was told in  
15 substance, that the ramp was being repaired. Plaintiff CRAIG YATES had no choice but to order  
16 from the sidewalk and leave with a to-go order.

17           25. On or about February 3, 2010, plaintiff CRAIG YATES returned to TOASTIES  
18 and again could not enter it because of the concrete landing. Plaintiff CRAIG YATES was  
19 compelled to order his food from the sidewalk to-go. Plaintiff CRAIG YATES inquired whether  
20 the ramp had been fixed, and plaintiff CRAIG YATES was told in substance that the ramp was  
21 no longer needed. Plaintiff CRAIG YATES took his to-go order and left.

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1           26.     Therefore, at said times and place, plaintiff CRAIG YATES, a person with a  
2     disability, encountered the following inaccessible elements of the subject TOASTIES which  
3     constituted architectural barriers and a denial of the proper and legally-required access to a public  
4     accommodation to persons with physical disabilities including, but not limited to:

- 5           a.     lack of directional signage to show accessible routes of travel, i.e.  
6                 entrances;
- 7           b.     lack of an accessible entrance due to a raised six (6) inch concrete landing;
- 8           c.     lack of a handicapped-accessible public restroom; and
- 9           d.     On personal knowledge, information and belief, other public facilities and  
10                elements too numerous to list were improperly inaccessible for use by  
11                persons with physical disabilities.

12           27.     At all times stated herein, the existence of architectural barriers at defendants'  
13     place of public accommodation evidenced "actual notice" of defendants' intent not to comply  
14     with the Americans with Disabilities Act of 1990 either then, now or in the future.

15           28.     As a legal result of defendants HON WING FUNG and PIK WAH LEE FUNG, as  
16     Trustees of THE FUNG FAMILY TRUST, U.D.T. ("Under Declaration of Trust"), Dated August  
17     24, 1994; and CHARLIE TRUONG, an individual, dba TOASTIES's failure to act as a  
18     reasonable and prudent public accommodation in identifying, removing or creating architectural  
19     barriers, policies, practices and procedures that denied access to plaintiff and other persons with  
20     disabilities, plaintiff suffered the damages as alleged herein.

21           29.     As a further legal result of the actions and failure to act of defendants, and as a  
22     legal result of the failure to provide proper handicapped-accessible public facilities as set forth  
23     herein, plaintiff was denied his civil rights to full and equal access to public facilities. Plaintiff  
24     CRAIG YATES suffered a loss of his civil rights and his rights as a person with physical  
25     disabilities to full and equal access to public facilities.

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1       30. Further, plaintiff CRAIG YATES suffered emotional distress, mental distress,  
2 mental suffering, mental anguish, which includes, but is not limited to, shame, humiliation,  
3 embarrassment, anger, disappointment and worry, expectedly and naturally associated with a  
4 person with physical disabilities being denied access, all to his damages as prayed hereinafter in  
5 an amount within the jurisdiction of this court. No claim is being made for mental and emotional  
6 distress over and above that usually associated with the discrimination and physical injuries  
7 claimed, and no expert testimony regarding this usual mental and emotional distress will be  
8 presented at trial in support of the claim for damages.

9       31. Defendants', and each of their, failure to remove the architectural barriers at the  
10 respective public accommodation for which each was the landlords' and/or the tenants'  
11 complained of herein created, at the time of plaintiff CRAIG YATES's first visit to each of said  
12 public accommodations, and continues to create continuous and repeated exposure to substantially  
13 the same general harmful conditions which caused plaintiff CRAIG YATES harm as stated  
14 herein.

15       32. Plaintiff CRAIG YATES was denied his rights to equal access to a public facility  
16 by defendants HON WING FUNG and PIK WAH LEE FUNG, as Trustees of THE FUNG  
17 FAMILY TRUST, U.D.T. ("Under Declaration of Trust"), Dated August 24, 1994; and  
18 CHARLIE TRUONG, an individual, dba TOASTIES, because defendants HON WING FUNG  
19 and PIK WAH LEE FUNG, as Trustees of THE FUNG FAMILY TRUST, U.D.T. ("Under  
20 Declaration of Trust"), Dated August 24, 1994; and CHARLIE TRUONG, an individual, dba  
21 TOASTIES maintained a café without access for persons with physical disabilities to its facilities,  
22 including but not limited to the entrance and unisex restroom, and other public areas as stated  
23 herein, and continue to the date of filing this complaint to deny equal access to plaintiff and other  
24 persons with physical disabilities in these and other ways.

25       33. On information and belief, construction alterations carried out by defendants have  
26 also triggered access requirements under both California law and the Americans with Disabilities  
27 Act of 1990.

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1        34. Plaintiff, as described hereinbelow, seeks injunctive relief to require TOASTIES to  
2 be made accessible to meet the requirements of both California law and the Americans with  
3 Disabilities Act of 1990, whichever is more restrictive, so long as defendants operate TOASTIES  
4 as a public facility.

5        35. Plaintiff seeks damages for violation of their civil rights on February 9, 2009,  
6 March 7, 2009, March 9, 2009, April 10, 2009, January 26, 2010 and February 3, 2010 and seeks  
7 statutory damages of not less than \$4,000, pursuant to Civil Code §52(a) or alternatively \$1000  
8 pursuant to Civil Code §54.3, for each day after his visit that the trier of fact (court/jury)  
9 determines was the date that some or all remedial work should have been completed under the  
10 standard that the landlord and tenant had an ongoing duty to identify and remove architectural  
11 barriers where it was readily achievable to do so, which deterred plaintiff CRAIG YATES from  
12 returning to the subject public accommodation because of his knowledge and/or belief that neither  
13 some or all architectural barriers had been removed and that said premises remains inaccessible to  
14 persons with disabilities whether a wheelchair user or otherwise.

15        36. On information and belief, defendants have been negligent in their affirmative duty  
16 to identify the architectural barriers complained of herein and negligent in the removal of some or  
17 all of said barriers.

18        37. Because of defendants' violations, plaintiff and other persons with physical  
19 disabilities are unable to use public facilities such as those owned and operated by defendants on a  
20 "full and equal" basis unless such facility is in compliance with the provisions of the Americans  
21 with Disabilities Act of 1990, Civil Code §54.1 and Health & Safety Code §19955, *et seq.* and  
22 other accessibility law as plead herein. Plaintiff seeks an order from this court compelling  
23 defendants to make TOASTIES accessible to persons with disabilities.

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1        38. On information and belief, defendants HON WING FUNG and PIK WAH LEE  
2 FUNG, as Trustees of THE FUNG FAMILY TRUST, U.D.T. ("Under Declaration of Trust"),  
3 Dated August 24, 1994 have intentionally undertaken to modify and alter existing building(s), and  
4 have failed to make them comply with accessibility requirements under the requirements of  
5 ADAAG and Title 24. The acts and omission of said defendants, in failing to provide the required  
6 accessible public facilities at the time of plaintiff's visit and injuries, indicate actual and implied  
7 malice toward plaintiff, and despicable conduct carried out by defendants, with a willful and  
8 conscious disregard for the rights and safety of plaintiff and other similarly situated persons, and  
9 justify a trebling of damages as provided by Civil Code §§52(a) and 54.3, in order to make a more  
10 profound example of defendants, and landlords of other cafes and other public facilities, and to  
11 punish defendants and to carry out the purposes of the Civil Code §§ 51, 51.5 and 54.

12        39. Plaintiff is informed and believes and therefore alleges that defendants HON  
13 WING FUNG and PIK WAH LEE FUNG, as Trustees of THE FUNG FAMILY TRUST, U.D.T.  
14 ("Under Declaration of Trust"), Dated August 24, 1994; and CHARLIE TRUONG, an individual,  
15 dba TOASTIES, and each of them, caused the subject building(s) which constitute TOASTIES to  
16 be constructed, altered and maintained in such a manner that persons with physical disabilities  
17 were denied full and equal access to, within and throughout said building(s) of the TOASTIES  
18 and were denied full and equal use of said public facilities. Furthermore, on information and  
19 belief, defendants have continued to maintain and operate said TOASTIES and/or its building(s)  
20 in such conditions up to the present time, despite actual and constructive notice to such defendants  
21 that the configuration of TOASTIES and/or its building(s) is in violation of the civil rights of  
22 persons with physical disabilities, such as plaintiff CRAIG YATES, and other members of the  
23 disability community. Such construction, modification, ownership, operation, maintenance and  
24 practices of such public facilities are in violation of Civil Code §§51, 51.5 and 54, Health and  
25 Safety Code §19955, and the ADA, 42 U.S.C. §12101, *et seq.*

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1        40. On personal knowledge, information and belief, the basis of defendants' actual and  
2 constructive notice that the physical configuration of the facilities including, but not limited to,  
3 architectural barriers constituting the Café Gratitude and then TOASTIES and/or building(s) was  
4 in violation of the civil rights of persons with physical disabilities, such as plaintiff, includes, but  
5 is not limited to, communications with invitees and guests, plaintiff CRAIG YATES himself,  
6 sponsors of conferences, owners of other restaurants, hotels, motels and businesses, notices they  
7 obtained from governmental agencies upon modification, improvement, or substantial repair of  
8 the subject premises and other properties owned by these defendants, newspaper articles and trade  
9 publications regarding the Americans with Disabilities Act of 1990 and other access laws, public  
10 service announcements by former U.S. Attorney General Janet Reno between 1993 and 2000, and  
11 other similar information. Defendants' failure, under state and federal law, to make the  
12 TOASTIES accessible is further evidence of defendants' conscious disregard for the rights of  
13 plaintiff and other similarly situated persons with disabilities. Despite being informed of such  
14 effect on plaintiff and other persons with physical disabilities due to the lack of accessible  
15 facilities, defendants, and each of them, knowingly and willfully refused to take any steps to  
16 rectify the situation and to provide full and equal access for plaintiff and other persons with  
17 physical disabilities to the Café Gratitude and then TOASTIES. Said defendants, and each of  
18 them, have continued such practices, in conscious disregard for the rights of plaintiff and other  
19 persons with physical disabilities, up to the date of filing of this complaint, and continuing  
20 thereon. Defendants had further actual knowledge of the architectural barriers referred to herein  
21 by virtue of the demand letter addressed to the defendants and served concurrently with the  
22 summons and complaint. Said conduct, with knowledge of the effect it was and is having on  
23 plaintiff and other persons with physical disabilities, constitutes despicable conduct in conscious  
24 disregard of the rights and safety of plaintiff and of other similarly situated persons, justifying the  
25 imposition of treble damages per Civil Code §§52 and 54.3.

26        41. Plaintiff CRAIG YATES and the disability community, consisting of persons with  
27 disabilities, would, could and will return to the subject public accommodation when it is made  
28 accessible to persons with disabilities.



**I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**

(On behalf of Plaintiff CRAIG YATES, an individual and Against Defendants HON WING FUNG and PIK WAH LEE FUNG, as Trustees of THE FUNG FAMILY TRUST, U.D.T. ("Under Declaration of Trust"), Dated August 24, 1994; and CHARLIE TRUONG, an individual, dba TOASTIES, inclusive) (42 U.S.C. §12101, *et seq.*)

42. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 41 of this complaint.

43. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C. §12101 regarding persons with physical disabilities, finding that laws were needed to more fully protect:

some 43 million Americans with one or more physical or mental disabilities; [that] historically society has tended to isolate and segregate individuals with disabilities; [that] such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem; [that] the nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living and economic self-sufficiency for such individuals; [and that] the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous.

44. Congress stated as its purpose in passing the Americans with Disabilities Act of 1990 (42 U.S.C. §12102):

It is the purpose of this act (1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities; (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; (3) to ensure that the Federal government plays a central role in enforcing the standards established in this act on behalf of individuals with disabilities; and (4) to invoke the sweep of Congressional authority, including the power to enforce the 14th Amendment and to regulate commerce, in order to address the major areas of discrimination faced day to day by people with disabilities.

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1        45. As part of the Americans with Disabilities Act of 1990, Public Law 101-336  
 2 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services  
 3 Operated by Private Entities" (Section 301 42 U.S.C. §12181, *et seq.*). Among the public  
 4 accommodations identified for purposes of this title was:

5            (7) PUBLIC ACCOMMODATION - The following private  
 6 entities are considered public accommodations for purposes of this  
 title, if the operations of such entities affect commerce -

7            ---

8            (B) a restaurant, bar or other establishment serving food or  
 9 drink.

10           42 U.S.C. §12181(7)(B)

11        46. Pursuant to §302, 42 U.S.C. §12182, "No individual shall be discriminated against  
 12 on the basis of disability in the full and equal enjoyment of the goods, services, facilities,  
 13 privileges, advantages, or accommodations of any place of public accommodation by any person  
 14 who owns, leases, or leases to, or operates a place of public accommodation."

15        47. The specific prohibitions against discrimination set forth in §302(b)(2)(a),  
 16 42 U.S.C. §12182(b)(2)(a) are:

17            (I) the imposition or application of eligibility criteria  
 18 that screen out or tend to screen out an individual with a disability  
 19 or any class of individuals with disabilities from fully and equally  
 20 enjoying any goods, services, facilities, privileges, advantages, or  
 accommodations, unless such criteria can be shown to be necessary  
 for the provision of the goods, services, facilities, privileges,  
 advantages, or accommodations being offered;

21            (ii) a failure to make reasonable modifications in  
 22 policies, practices, or procedures, when such modifications are  
 23 necessary to afford such goods, services, facilities, privileges,  
 24 advantages or accommodations to individuals with disabilities,  
 unless the entity can demonstrate that making such modifications  
 would fundamentally alter the nature of such goods, services,  
 facilities, privileges, advantages, or accommodations;

25            (iii) a failure to take such steps as may be necessary to  
 26 ensure that no individual with a disability is excluded, denied  
 27 services, segregated or otherwise treated differently than other  
 28 individuals because of the absence of auxiliary aids and services,  
 unless the entity can demonstrate that taking such steps would  
 fundamentally alter the nature of the good, service, facility,  
 privilege, advantage, or accommodation being offered or would  
 result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities . . . where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages or accommodations available through alternative methods if such methods are readily achievable.

The acts of defendants set forth herein were a violation of plaintiff's rights under the ADA, Public Law 101-336, and the regulations promulgated thereunder, 28 CFR Part 36, *et seq.* - Effective January 31, 1993, the standards of the ADA were also incorporated into California Civil Code §51, making available the damage remedies incorporated into Civil Code §51 and 52(a) and 54.3.

48. The removal of the barriers complained of by plaintiff as hereinabove alleged were at all times after January 26, 1992 "readily achievable" as to the subject building(s) of Café Gratitude and then TOASTIES pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information and belief, if the removal of all the barriers complained of herein together was not "readily achievable," the removal of each individual barrier complained of herein was "readily achievable." On information and belief, defendants' failure to remove said barriers was likewise due to discriminatory practices, procedures and eligibility criteria, as defined by 42 U.S.C. §12182 (b)(2)(A)(i) and (ii).

49. Per 42 U.S.C. §12181 (9), the term "readily achievable" means "easily accomplishable and able to be carried out without much difficulty or expense." The statute defines relative "expense" in part in relation to the total financial resources of the entities involved. Plaintiff alleges that properly repairing, modifying, or altering each of the items that plaintiff complains of herein were and are "readily achievable" by the defendants under the standards set forth under §301(9) of the Americans with Disabilities Act. Furthermore, if it was not "readily achievable" for defendants to remove each of such barriers, defendants have failed to make the required services available through alternative methods which were readily achievable.

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1        50. On information and belief, construction work on, and modifications of, the subject  
2 building(s) of Café Gratitude and then TOASTIES occurred after the compliance date for the  
3 Americans with Disabilities Act, January 26, 1992, independently triggering access requirements  
4 under Title III of the ADA.

5        51. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*  
6 *seq.*, plaintiff is entitled to the remedies and procedures set forth in §204(a) of the Civil Rights  
7 Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiff is being subjected to discrimination on the basis  
8 of disability in violation of this title or have reasonable grounds for believing that plaintiff is about  
9 to be subjected to discrimination in violation of §302. Plaintiff is deterred from returning to or  
10 making use of the public facilities complained of herein so long as the premises and defendants'  
11 policies bar full and equal use by persons with physical disabilities.

12        52. 42 U.S.C. 12188 (a)(1) states: "Nothing in this section shall require a person with a  
13 disability to engage in a futile gesture if such person has actual notice that a person or  
14 organization covered by this title does not intend to comply with its provisions." Pursuant to this  
15 section, plaintiff CRAIG YATES has not returned to defendants' premises since on or about  
16 February 3, 2010, but on information and belief, alleges that defendants have continued to violate  
17 the law and deny the rights of plaintiff and of other persons with physical disabilities to access this  
18 public accommodation. Pursuant to 42 USC §12188(a)(2), "In cases of violations of  
19 §302(b)(2)(A)(iv) . . . injunctive relief shall include an order to alter facilities to make such  
20 facilities readily accessible to and usable by individuals with disabilities to the extent required by  
21 this title."

22        53. Plaintiff seeks relief pursuant to remedies set forth in §204(a) of the Civil Rights  
23 Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement  
24 the Americans with Disabilities Act of 1990, including but not limited to an order granting  
25 injunctive relief and attorneys' fees. Plaintiff will seek attorneys' fees conditioned upon being  
26 deemed to be the prevailing party.

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**II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.**  
 (On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants HON WING FUNG and PIK WAH LEE FUNG, as Trustees of THE FUNG FAMILY TRUST, U.D.T. ("Under Declaration of Trust"), Dated August 24, 1994; and CHARLIE TRUONG, an individual, dba TOASTIES, inclusive)  
 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

54. Plaintiff repleads and incorporates by reference as if fully set forth again herein, the allegations contained in paragraphs 1 through 53 of this complaint.

55. At all times relevant to this action, California Civil Code §54 has provided that persons with physical disabilities are not to be discriminated against because of physical handicap or disability. This section provides that:

(a) Individuals with disabilities . . . have the same rights as the general public to full and free use of the streets, highways, sidewalks, walkways, public buildings, medical facilities, including hospitals, clinics, and physicians' offices, and other public places.

56. California Civil Code §54.1 provides that persons with disabilities shall not be denied full and equal access to places of public accommodation or facilities:

(a)(1) Individuals with disabilities shall be entitled to full and equal access, as other members of the general public, to accommodations, advantages, facilities, medical facilities, including hospitals, clinics, and physicians' offices, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes of transportation (whether private, public, franchised, licensed, contracted, or otherwise provided), telephone facilities, adoption agencies, private schools, hotels, lodging places, places of public accommodation, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.

Civil Code §54.1(a)(1)

57. California Civil Code §54.1 further provides that a violation of the Americans with Disabilities Act of 1990 constitutes a violation of section 54.1:

(d) A violation of the right of an individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) also constitutes a violation of this section, and nothing in this section shall be construed to limit the access of any person in violation of that act.

Civil Code §54.1(d)

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58. Plaintiff CRAIG YATES is a person within the meaning of Civil Code §54.1 whose rights have been infringed upon and violated by the defendants, and each of them, as prescribed by Civil Code §§54 and 54.1. Each specific architectural barrier which defendants knowingly and willfully fail and refuse to remove constitutes a separate act in violation of Civil Code §54 and 54.1. Plaintiff has been and continue to be denied full and equal access first to defendants' Café Gratitude and then TOASTIES. As a legal result, plaintiff is entitled to seek damages pursuant to a court or jury determination, in accordance with California Civil Code §54.3(a) for each day on which he visited or have been deterred from visiting Café Gratitude and then TOASTIES because of his knowledge and belief that Café Gratitude and then TOASTIES was/is inaccessible to persons with disabilities. California Civil Code §54.3(a) provides:

Any person or persons, firm or corporation, who denies or interferes with admittance to or enjoyment of the public facilities as specified in Sections 54 and 54.1 or otherwise interferes with the rights of an individual with a disability under Sections 54, 54.1 and 54.2 is liable for each offense for the actual damages and any amount as may be determined by a jury, or the court sitting without a jury, up to a maximum of three times the amount of actual damages but in no case less than . . . one thousand dollars (\$1,000) and . . . attorney's fees as may be determined by the court in addition thereto, suffered by any person denied any of the rights provided in Sections 54, 54.1 and 54.2.

Civil Code §54.3(a)

59. On or about February 9, 2009, March 7, 2009, March 9, 2009, April 10, 2009, January 26, 2010 and February 3, 2010, plaintiff CRAIG YATES suffered violations of Civil Code §§54 and 54.1 in that plaintiff CRAIG YATES was denied access to the entrance and unisex restroom and other public facilities as stated herein at the Café Gratitude and now TOASTIES and on the basis that plaintiff CRAIG YATES was a person with physical disabilities.

60. As a result of the denial of equal access to defendants' facilities due to the acts and omissions of defendants, and each of them, in owning, operating and maintaining these subject public facilities, plaintiff suffered violations of plaintiff's civil rights, including but not limited to rights under Civil Code §§54, 54.1 and 54.3.

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1        61. Further, plaintiff CRAIG YATES suffered mental distress, mental suffering, mental  
2 anguish, which includes shame, humiliation, embarrassment, frustration, anger, disappointment  
3 and worry, all of which are expectedly and naturally associated with a denial of access to a person  
4 with physical disabilities, all to plaintiff's damages as hereinafter stated. Defendants' actions and  
5 omissions to act constituted discrimination against plaintiff on the sole basis that plaintiff is a  
6 person or an entity that represents persons with physical disabilities and unable, because of the  
7 architectural barriers created and maintained by the defendants in violation of the subject laws, to  
8 use the public facilities hereinabove described on a full and equal basis as other persons.

9        62. Plaintiff has been damaged by defendants', and each of their, wrongful conduct and  
10 seeks the relief that is afforded by Civil Code §§54 and 54.1, 54.3 for violation of plaintiff's rights  
11 as a person or an entity that represents persons with physical disabilities on or about  
12 February 9, 2009, March 7, 2009, March 9, 2009, April 10, 2009, January 26, 2010 and  
13 February 3, 2010, and on a continuing basis since then, including statutory damages, a trebling of  
14 all of actual damages, general and special damages available pursuant to §54.3 of the Civil Code  
15 according to proof.

16        63. As a result of defendants', and each of their, acts and omissions in this regard,  
17 plaintiff has been required to incur legal expenses and hire attorneys in order to enforce  
18 plaintiff's rights and enforce the provisions of the law protecting access for persons with physical  
19 disabilities and prohibiting discrimination against persons with physical disabilities. Pursuant to  
20 the provisions of Civil Code §54.3, plaintiff therefore will seek recovery in this lawsuit for all  
21 reasonable attorneys' fees and costs incurred if deemed the prevailing party. Additionally,  
22 plaintiff's lawsuit is intended not only to obtain compensation for damages to plaintiff, but also to  
23 compel the defendants to make their facilities accessible to all members of the public with  
24 disabilities, justifying public interest attorneys' fees, if deemed the prevailing party, pursuant to  
25 the provisions of §1021.5 of the Code of Civil Procedure.

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1 **III. THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY**  
 2 **FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE §19955, *ET. SEQ.***  
 3 (On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants HON  
 4 WING FUNG and PIK WAH LEE FUNG, as Trustees of THE FUNG FAMILY TRUST,  
 U.D.T. ("Under Declaration of Trust"), Dated August 24, 1994; and CHARLIE  
 TRUONG, an individual, dba TOASTIES, inclusive)  
 (Health & Safety Code §19955, *et seq.*)

5 64. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,  
 6 the allegations contained in paragraphs 1 through 63 of this complaint.

7 65. Health & Safety Code §19955 provides in pertinent part:

8 The purpose of this part is to insure that public accommodations or  
 9 facilities constructed in this state with private funds adhere to the  
 10 provisions of Chapter 7 (commencing with Sec. 4450) of Division 5  
 11 of Title 1 of the Government Code. For the purposes of this part  
 12 "public accommodation or facilities" means a building, structure,  
 13 facility, complex, or improved area which is used by the general  
 public and shall include auditoriums, hospitals, theaters, restaurants,  
 hotels, motels, stadiums, and convention centers. When sanitary  
 facilities are made available for the public, clients or employees in  
 such accommodations or facilities, they shall be made available for  
 the handicapped.

14 66. Health & Safety Code §19956, which appears in the same chapter as §19955,  
 15 provides in pertinent part, "accommodations constructed in this state shall conform to the  
 16 provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government  
 17 Code . . . ." Health & Safety Code §19956 was operative July 1, 1970, and is applicable to all  
 18 public accommodations constructed or altered after that date. On information and belief, portions  
 19 of the Café Gratitude and TOASTIES and/or of the building(s) were constructed and/or altered  
 20 after July 1, 1970, and substantial portions of the restaurants and/or the building(s) had alterations,  
 21 structural repairs, and/or additions made to such public accommodations after July 1, 1970,  
 22 thereby requiring said restaurants and/or building to be subject to the requirements of Part 5.5,  
 23 §19955, *et seq.*, of the Health & Safety Code upon such alteration, structural repairs or additions  
 24 per Health & Safety Code §19959.

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1           67. Pursuant to the authority delegated by Government Code §4450, *et seq*, the State  
2 Architect promulgated regulations for the enforcement of these provisions. Effective July 1,  
3 1982, Title 24 of the California Building Standards Code adopted the California State Architect's  
4 Regulations and these regulations must be complied with as to any alterations and/or  
5 modifications of Café Gratitude and TOASTIES and/or the building(s) occurring after that date.  
6 Construction changes occurring prior to this date but after July 1, 1970 triggered access  
7 requirements pursuant to the "ASA" requirements, the American Standards Association  
8 Specifications, A117.1-1961. On information and belief, at the time of the construction and  
9 modification of said building, all buildings and facilities covered were required to conform to  
10 each of the standards and specifications described in the American Standards Association  
11 Specifications and/or those contained in Title 24 of the California Building Standards Code.

12           68. Cafes and Restaurants such as the Café Gratitude and TOASTIES are "public  
13 accommodations or facilities" within the meaning of Health & Safety Code §19955, *et seq*.

14           69. As a result of the actions and failure to act of defendants, and as a result of the  
15 failure to provide proper and legally handicapped-accessible public facilities, plaintiff was denied  
16 plaintiff's rights to full and equal access to public facilities and suffered a loss of plaintiff's civil  
17 rights and plaintiff's rights as a person with physical disabilities to full and equal access to public  
18 facilities.

19           70. Attorneys' Fees -- As a result of defendants' acts and omissions in this regard,  
20 plaintiff has been required to incur legal expenses and hire attorneys in order to enforce plaintiff's  
21 civil rights and enforce provisions of the law protecting access for the persons with physical  
22 disabilities and prohibiting discrimination against the persons with physical disabilities, and to  
23 take such action both in plaintiff's own interests and in order to enforce an important right  
24 affecting the public interest. Plaintiff, therefore, seeks in this lawsuit the recovery of all  
25 reasonable attorneys' fees incurred, pursuant to the provisions of the Code of Civil Procedure  
26 §1021.5. Plaintiff additionally seeks attorneys' fees pursuant to Health & Safety Code §19953  
27 and Civil Code §§54.3 and/or in the alternative, plaintiff will seek attorneys' fees, costs and  
28 litigation expenses pursuant to §204(a) of the Civil Rights Act of 1964 (42 U.S.C. 200(a)-3(a)).

1 Plaintiff will seek attorneys' fees conditioned upon being deemed to be the prevailing party.

2 71. Plaintiff seeks injunctive relief for an order compelling defendants, and each of  
3 them, to make the subject place of public accommodation readily accessible to and usable by  
4 persons with disabilities.

5 **IV. FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND  
6 EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES  
AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, ET  
7 SEQ. (THE UNRUH CIVIL RIGHTS ACT)**

8 (On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants HON  
9 WING FUNG and PIK WAH LEE FUNG, as Trustees of THE FUNG FAMILY TRUST,  
U.D.T. ("Under Declaration of Trust"), Dated August 24, 1994; and CHARLIE  
TRUONG, an individual, dba TOASTIES, inclusive)  
(Civil Code §51, 51.5)

10 72. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,  
11 the allegations contained in paragraphs 1 through 71 of this complaint.

12 73. Defendants' actions and omissions and failure to act as a reasonable and prudent  
13 public accommodation in identifying, removing and/or creating architectural barriers, policies,  
14 practices and/or procedures violates §51 of the Civil Code, the Unruh Civil Rights Act. The  
15 Unruh Act provides:

16 This section shall be known, and may be cited, as the Unruh  
17 Civil Rights Act.

18 All persons within the jurisdiction of this state are free and  
19 equal, and no matter what their sex, race, color, religion, ancestry,  
20 national origin, or **disability** are entitled to the full and equal  
accommodations, advantages, facilities, privileges, or services in all  
business establishments of every kind whatsoever.

21 This section shall not be construed to confer any right or  
22 privilege on a person that is conditioned or limited by law or that is  
applicable alike to persons of every sex, color, race, religion,  
ancestry, national origin, or **disability**.

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1 Nothing in this section shall be construed to require any  
 2 construction, alteration, repair, structural or otherwise, or  
 3 modification of any sort whatsoever, beyond that construction,  
 4 alteration, repair, or modification that is otherwise required by other  
 5 provisions of law, to any new or existing establishment, facility,  
 6 building, improvement, or any other structure . . . nor shall anything  
 7 in this section be construed to augment, restrict, or alter in any way  
 8 the authority of the State Architect to require construction,  
 9 alteration, repair, or modifications that the State Architect otherwise  
 10 possesses pursuant to other . . . laws.

11 A violation of the right of any individual under the  
 12 Americans with Disabilities Act of 1990 (Public Law 101-336) shall  
 13 also constitute a violation of this section.

14 As the Unruh Act incorporates violations of the Americans with Disabilities Act of 1990, the  
 15 "intent" of the defendants in not complying with barrier removal is not an issue. Hence, the  
 16 failure on the parts of defendants, as reasonable and prudent public accommodations, in acting or  
 17 failing to act to identify and remove barriers can be construed as a "negligent per se" act of  
 18 defendants, and each of them.

19 74. The acts and omissions of defendants stated herein are discriminatory in nature and  
 20 in violation of Civil Code §51.5:

21 No business establishment of any kind whatsoever shall  
 22 discriminate against, boycott or blacklist, refuse to buy from, sell to,  
 23 or trade with any person in this state because of the race, creed,  
 24 religion, color, national origin, sex, or **disability** of the person or of  
 25 the person's partners, members, stockholders, directors, officers,  
 26 managers, superintendents, agents, employees, business associates,  
 27 suppliers, or customers.

28 As used in this section, "person" includes any person, firm  
 association, organization, partnership, business trust, corporation,  
 limited liability company, or company.

Nothing in this section shall be construed to require any  
 construction, alteration, repair, structural or otherwise, or  
 modification of any sort whatsoever, beyond that construction,  
 alteration, repair or modification that is otherwise required by other  
 provisions of law, to any new or existing establishment, facility,  
 building, improvement, or any other structure . . . nor shall anything  
 in this section be construed to augment, restrict or alter in any way  
 the authority of the State Architect to require construction,  
 alteration, repair, or modifications that the State Architect otherwise  
 possesses pursuant to other laws.

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1        75. Defendants' acts and omissions as specified have denied to the plaintiff full and  
2 equal accommodations, advantages, facilities, privileges and services in a business establishment,  
3 on the basis of physical disability, in violation of Civil Code §§51 and 51.5, the Unruh Civil  
4 Rights Act. Furthermore, pursuant to the 1992 amendment to California Civil Code §51, "A  
5 violation of the right of any individual under the Americans with Disabilities Act of 1990 (Public  
6 Law 101-336) shall also constitute a violation of this section." Plaintiff accordingly incorporates  
7 the entirety of his/her above cause of action for violation of the Americans with Disabilities Act at  
8 §42, *et seq.*, as if repled herein.

9        76. As a further legal result of the actions and failure to act of defendants, and as a  
10 legal result of the failure to provide proper handicapped-accessible public facilities as set forth  
11 herein, plaintiff was denied his civil rights to full and equal access to public facilities. Plaintiff  
12 CRAIG YATES suffered a loss of his civil rights and his rights as a person with physical  
13 disabilities to full and equal access to public facilities.

14        77. Further, plaintiff CRAIG YATES suffered mental distress, mental  
15 suffering, mental anguish, which includes shame, humiliation, embarrassment, frustration, anger,  
16 disappointment and worry, all of which are expectedly and naturally associated with a denial of  
17 access to a person with physical disabilities, all to plaintiff's damages as hereinafter stated.  
18 Defendants' actions and omissions to act constituted discrimination against plaintiff on the sole  
19 basis that plaintiff is a person or an entity that represents persons with physical disabilities and  
20 unable, because of the architectural barriers created and maintained by the defendants in violation  
21 of the subject laws, to use the public facilities hereinabove described on a full and equal basis as  
22 other persons.

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1 78. Plaintiff CRAIG YATES is entitled to the rights and remedies of §52(a)  
 2 of the Civil Code, including trebling of actual damages (defined by §52(h) of the Civil Code to  
 3 mean "special and general damages"), as well as to reasonable attorneys' fees and costs, as is  
 4 allowed by statute, according to proof if deemed to be the prevailing party.

5 **PRAYER:**

6 Plaintiff prays that this court award damages and provide relief as follows:

7 **I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A**  
 8 **PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**  
 9 **DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**

10 (On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants HON  
 11 WING FUNG and PIK WAH LEE FUNG, as Trustees of THE FUNG FAMILY TRUST,  
 U.D.T. ("Under Declaration of Trust"), Dated August 24, 1994; and CHARLIE  
 TRUONG, an individual, dba TOASTIES, inclusive)  
 (42 U.S.C. §12101, *et seq.*)

12 1. For injunctive relief, compelling defendants HON WING FUNG and PIK WAH  
 13 LEE FUNG, as Trustees of THE FUNG FAMILY TRUST, U.D.T. ("Under Declaration of  
 14 Trust"), Dated August 24, 1994; and CHARLIE TRUONG, an individual, dba TOASTIES,  
 15 inclusive, to make the TOASTIES, located at 1336 9<sup>th</sup> Avenue, San Francisco, California, readily  
 16 accessible to and usable by individuals with disabilities, per 42 U.S.C §12181, *et seq.*, and to  
 17 make reasonable modifications in policies, practice, eligibility criteria and procedures so as to  
 18 afford full access to the goods, services, facilities, privileges, advantages and accommodations  
 19 being offered.

20 2. For attorneys' fees, litigation expenses and costs of suit, if plaintiff is deemed the  
 21 prevailing party; and

22 3. For such other and further relief as the court may deem proper.

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**II. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.**

(On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants HON WING FUNG and PIK WAH LEE FUNG, as Trustees of THE FUNG FAMILY TRUST, U.D.T. ("Under Declaration of Trust"), Dated August 24, 1994; and CHARLIE TRUONG, an individual, dba TOASTIES, inclusive)  
(California Civil Code §§54, 54.1, 54.3, *et seq.*)

1. For injunctive relief, compelling defendants HON WING FUNG and PIK WAH LEE FUNG, as Trustees of THE FUNG FAMILY TRUST, U.D.T. ("Under Declaration of Trust"), Dated August 24, 1994; and CHARLIE TRUONG, an individual, dba TOASTIES, inclusive, to make the TOASTIES, located at 1336 9<sup>th</sup> Avenue, San Francisco, California, readily accessible to and usable by individuals with disabilities, per state law.

2. Statutory damages as afforded by Civil Code §54.3 for the date of incident and for each occasion on which plaintiff was deterred from returning to the subject public accommodation.

3. Attorneys' fees pursuant to Civil Code §54.3 and Code of Civil Procedure §1021.5, if plaintiffs are deemed the prevailing party;

4. Treble damages pursuant to Civil Code §54.3;

5. General damages according to proof;

6. For all costs of suit;

7. Prejudgment interest pursuant to Civil Code §3291; and

8. Such other and further relief as the court may deem just and proper.

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1 **III. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE**  
 2 **SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE**  
 3 **§19955, ET. SEO.**

4 (On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants HON  
 5 WING FUNG and PIK WAH LEE FUNG, as Trustees of THE FUNG FAMILY TRUST,  
 6 U.D.T. ("Under Declaration of Trust"), Dated August 24, 1994; and CHARLIE  
 7 TRUONG, an individual, dba TOASTIES, inclusive)  
 8 (Health & Safety code §19955, *et seq.*)

9 1. For injunctive relief, compelling defendants HON WING FUNG and PIK WAH  
 10 LEE FUNG, as Trustees of THE FUNG FAMILY TRUST, U.D.T. ("Under Declaration of  
 11 Trust"), Dated August 24, 1994; and CHARLIE TRUONG, an individual, dba TOASTIES,  
 12 inclusive, to make the TOASTIES, located at 1336 9<sup>th</sup> Avenue, San Francisco, California, readily  
 13 accessible to and usable by individuals with disabilities, per state law.

14 2. For attorneys' fees pursuant to Code of Civil Procedure §1021.5, and/or,  
 15 alternatively, Health & Safety Code §19953, if plaintiff is deemed the prevailing party;

16 3. For all costs of suit;

17 4. For prejudgment interest pursuant to Civil Code §3291;

18 5. Such other and further relief as the court may deem just and proper.

19 **IV. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO**  
 20 **FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES,**  
 21 **PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL**  
 22 **CODE §51, ET SEO. (THE UNRUH CIVIL RIGHTS ACT)**

23 (On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants HON  
 24 WING FUNG and PIK WAH LEE FUNG, as Trustees of THE FUNG FAMILY TRUST,  
 25 U.D.T. ("Under Declaration of Trust"), Dated August 24, 1994; and CHARLIE  
 26 TRUONG, an individual, dba TOASTIES, inclusive)  
 27 (California Civil Code §§51, 51.5, *et seq.*)

28 1. All statutory damages as afforded by Civil Code §52(a) for the date of incident and  
 for each occasion on which plaintiff was deterred from returning to the subject public  
 accommodation;

2. Attorneys' fees pursuant to Civil Code §52(a), if plaintiff is deemed the prevailing  
 party;

3. General damages according to proof;

4. Treble damages pursuant to Civil Code §52(a);

5. For all costs of suit;

6. Prejudgment interest pursuant to Civil Code §3291; and

7. Such other and further relief as the court may deem just and proper.

Dated: 3/23/10, 2010

THOMAS E. FRANKOVICH,  
***A PROFESSIONAL LAW CORPORATION***

By: 

THOMAS E. FRANKOVICH  
Attorneys for Plaintiff CRAIG YATES, an individual

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury for all claims for which a jury is permitted.

Dated: 3/23/10, 2010

THOMAS E. FRANKOVICH,  
***A PROFESSIONAL LAW CORPORATION***

By: 

THOMAS E. FRANKOVICH  
Attorneys for Plaintiff CRAIG YATES, an individual